

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

LORENZO ENRIQUEZ, et al.,

Plaintiffs,

v.

RENEW FINANCIAL, LLC, et al.,

Defendants.

Case No. 1:20-cv-00914-DAD-SAB

ORDER DIRECTING THE CLERK OF THE COURT TO TERMINATE RENEW FINANCIAL, LLC, AS A PARTY IN THIS ACTION AND ADVISING PLAINTIFFS TO PROVIDE STATUS REGARDING REMAINING DEFENDANTS PURSUANT TO NOVEMBER 17, 2020 ORDER

Plaintiffs Lorenzo Enriquez and Yolanda Enriquez filed this action on July 1, 2020, naming Renew Financial, LLC, as a Defendant. (ECF No. 1.) On July 1, 2020, the scheduling order issued setting the mandatory scheduling conference in this action for September 11, 2020. (ECF No. 2.) On August 20, 2020, the scheduling conference was continued to allow service to be completed and for an answer to be filed. (ECF No. 5.) On September 3, 2020, Plaintiffs filed a proof of service demonstrating service on Renew Financial, LLC, and on September 4, 2020, a first amended complaint was filed. (ECF Nos. 6,7.) In addition to Renew Financial, LLC, the first amended complaint also names Renew Financial Group, LLC, and Renew Financial Holdings, Inc., as additional Defendants. On September 10, 2020, a waiver of service was returned for Defendant Renew Financial Group, LLC, only, with the answer to the first amended complaint due on November 9, 2020. (ECF No. 9.)

Currently there is a scheduling conference set in this matter for December 8, 2020. (ECF No. 5.) However, no answer to the first amended complaint has been filed by any Defendant.

Due to this, on November 17, 2020, the Court ordered Plaintiffs to file within seven days of entry of the order, either file a request for entry of default or notice regarding the status of this action. (ECF No. 10.)

On November 23, 2020, Plaintiffs filed a notice of voluntary dismissal of Defendant Renew Financial, LLC, only, pursuant to Federal Rule of Civil Procedure 41(a). (ECF No. 11.) “[U]nder Rule 41(a)(1)(A)(i), ‘a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.’ ” Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quoting Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997)). Rule 41(a) of the Federal Rules of Civil Procedure allows a party to dismiss some or all of the defendants in an action through a Rule 41(a) notice. Wilson v. City of San Jose, 111 F.3d 688, 692 (9th Cir. 1997); see also Concha v. London, 62 F.3d 1493, 1506 (9th Cir. 1995) (“The plaintiff may dismiss either some or all of the defendants—or some or all of his claims—through a Rule 41(a)(1) notice.”); but see Hells Canyon Pres. Council v. U.S. Forest Serv., 403 F.3d 683, 687 (9th Cir. 2005) (The Ninth Circuit has “only extended the rule to allow the dismissal of all claims against one defendant, so that a defendant may be dismissed from the entire action.”). “Filing a notice of voluntary dismissal with the court automatically terminates the action as to the defendants who are the subjects of the notice.” Concha, 62 F.3d at 1506.

Accordingly, the Clerk of the Court is DIRECTED to terminate Defendant Renew Financial, LLC, as a Defendant in this action. Plaintiffs are further reminded that the deadline to provide a status regarding the remaining two Defendants expires seven (7) days from November 17, 2020. (ECF No. 10.)

IT IS SO ORDERED.

Dated: November 24, 2020


UNITED STATES MAGISTRATE JUDGE